

**AGREEMENT BETWEEN
THE SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
AND
THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
FOR THE
TREATMENT OF JUVENILE DELINQUENTS WITH SERIOUS MENTAL
RETARDATION**

The South Carolina Department of Juvenile Justice, hereinafter referred to as DJJ, is responsible for providing community based and institutional services to juveniles charged with, or adjudicated delinquent for, having committed an offense as delineated in Title 20, Chapter 7, of the S. C. Code of Laws; and

DJJ is authorized by the state law (20-7-7815) to transfer juveniles committed to its custody who are seriously handicapped by serious mental illness or mental retardation and who because of such disabilities cannot be adequately cared for in its custody, through the voluntary admission process or by instituting necessary legal action to accomplish the transfer of such juveniles to another state agency which in its judgement is best qualified to care for them in accordance with the laws of this State; and

The South Carolina Department of Disabilities and Special Needs, hereinafter referred to as DDSN, is authorized to provide and/or procure institutional or community based residential services to promote the well-being of adolescents with mental retardation as delineated in Title 44, Chapter 20, of the S.C. Code of Laws; and

DJJ and DDSN acknowledge their responsibility to serve delinquent juveniles with serious mental retardation and recognize that the care and treatment of such children can best and most economically be done through a collaborative effort involving not only their limited resources and expertise, but the resources, expertise and financial assistance of other federal, state, local and private agencies; and

DJJ and DDSN believe that services for committed delinquent juveniles with serious mental retardation should be provided in facilities separate from those which house other incarcerated delinquent youth. When such juveniles are identified, appropriate placement by DDSN will be secured. DJJ and DDSN further agree that these juveniles with serious mental retardation should be placed into programs with a treatment milieu which have been designed and are operated by treatment professionals who can promptly, professionally and, when necessary, securely, identify, serve and treat the cognitive and adaptive deficits of these juveniles until these juveniles' commitments end; and

Now, based on these shared responsibilities and the goals of better serving these delinquent youth with serious mental retardation, DJJ and DDSN enter into the agreement established below.

PURPOSE/APPLICATION

The purpose of the Memorandum of Agreement is to outline the process by which those juveniles diagnosed with serious mental retardation (SMR) committed to the custody of the State for having committed offenses are transferred for treatment to the South Carolina Department of Disabilities and Special Needs.

DJJ and DDSN jointly embrace several philosophical and procedural concepts which support this document. These are:

The goal of attaining for each juvenile maximum mental, physical, and social development while minimizing the reoccurrence of a delinquent act;

The belief that juveniles with mental retardation accused of an illegal act should be prosecuted when found legally competent unless there are other circumstances mitigating against prosecution;

To support and assist each juvenile offender with serious mental retardation in remaining within or returning to their family and home, or in the community environment;

Out of home placements from a DJJ institution require careful planning and must take into account needs for structure, supervision, training, and public safety; consequently, a 90 day time frame will be in effect, beginning with the date that the DDSN Liaison Psychologist diagnoses a juvenile with SMR, for locating appropriate placement and completing the transfer;

When out-of-home placements are necessary for supervision, management and treatment, the principle of least restrictive alternative should be followed. Institutional placement should be the last alternative, and should be considered only if no other available and appropriate community alternative exists;

That in addressing the procedures and concepts of this agreement, accurate, effective and timely communications, information sharing, and cooperative agency actions are necessary to ensure the best management and treatment decisions and outcomes for juveniles;

That in the matter of assessing the presence and evaluating the extent of mental retardation of individuals falling under this agreement, DDSN's findings shall be accepted by DJJ. If DJJ does not accept DDSN's findings as to their determination, the case will be referred to an independent reviewer pursuant to the review procedure provided in this agreement; and

That nothing in this agreement should be understood to preclude, supplement, or substitute the respective responsibilities that DJJ and DDSN are required to discharge under the South Carolina Code and/or Judge Anderson's orders of March 31, 1992 and April 24, 1992, nor does this agreement supersede other relevant provisions, procedures, or due process requirements under the S.C. Code.

A. CRITERIA FOR INCLUSION

Mental retardation is herein defined as significantly sub-average intellectual functioning (i.e. an IQ of approximately 70 or below on an individually administered IQ test) with concurrent deficits or impairments in present adaptive functioning in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. Mental retardation will be considered present when the individual's measured IQ is approximately 70 or below, is considered a valid estimate of current intellectual functioning, and is accompanied by deficits in adaptive functioning as listed above that are consistent with the individual's history. When measures of adaptive functioning cannot be administered in the standardized manner prescribed by the authors/publishers of the instrument(s), an estimate of adaptive functioning will be made based on available data and clinical judgement in a manner agreed upon by clinical staff from both agencies.

Once the presence of mental retardation has been established for a given juvenile, his or her identification as a juvenile with SMR will be determined on the basis of Judge Anderson's Court Order dated March 31, 1992 and the Supplemental Order dated April 24, 1992. Juveniles who are found to have Moderate Mental Retardation or below (i.e., IQs of approximately 55 or below with concurrent deficits in adaptive functioning) will be identified as juveniles with SMR. Juveniles who are found to have Mild Mental Retardation (i.e., IQs of approximately 55 to approximately 70 with concurrent deficits in adaptive functioning) will be further assessed with regard to their adjustment to the demands of institutional living. Such juveniles will qualify if and when they fail to demonstrate the ability to:

- 1) Care for self in the DJJ environment;
- 2) Protect self and not be victimized because of mental condition; or
- 3) Demonstrate sufficient judgement and ability to follow and understand instructions so as to benefit from DJJ programs.

Determination of the above competencies will be made following interviews with DJJ personnel who work directly with the juvenile, to include Juvenile Correctional Officers, teachers, social workers, and/or psychologists. Results of these interviews, including names of respondents, will be documented.

B. IDENTIFICATION OF SUBCLASS MEMBERS

All juveniles committed to DJJ will be screened for possible referral to DDSN. If after the initial screening or at any time prior to release SMR is suspected, a referral to the appropriate DJJ Supervising Psychologist shall be made for further review. DJJ's psychology staff may elect to interview, further assess and, if deemed necessary, test all juveniles referred to them. On the basis of the results of this assessment, the Supervising Psychologist will refer to the DDSN Liaison Psychologist those cases which are believed to qualify. The referral and staffing protocol between DJJ and DDSN shall include the following: 1) Completion of a standard referral form (see Attachment A) by DJJ to

DDSN with all the required information; 2) A packet of information attached to the referral form to include DJJ social work and psychological reports, psychiatric reports (if completed), any available school records or medical information and any other pertinent data. After receiving completed referrals from DJJ, DDSN will determine eligibility within 30 days and notify DJJ of its findings. In those cases where the DDSN Liaison Psychologist determines that the juvenile does not meet criteria for SMR designation, the DDSN Liaison will document the reasons for denial and will forward that finding along with pertinent clinical documentation, to include staff interviewed and tests administered, to the DJJ Director of Clinical and Professional Services. If DJJ disagrees and consensus cannot be reached by the DJJ team, the DJJ Coordinator of Special Needs Case Management (CSNCM), and the DDSN Liaison Psychologist, DJJ appeals shall be first channeled to the DJJ Director of Clinical and Professional Services and DDSN Liaison Psychologist for resolution in consultation with the principal designees of the State Directors of DDSN and DJJ. If the appeal issue(s) cannot be resolved by these professionals and between the principal designees within fifteen (15) working days from the receipt of the appeal to DDSN, then a referral will be made to a qualified independent reviewer agreed upon by the Agencies. The reviewer, after reviewing all available documentation and testing, conducting additional testing, if necessary, and utilizing this agreement's established criteria, shall make recommendations to the State Director of DDSN who will then make a final determination regarding inclusion/eligibility as delineated in Section 44-20-430. Should DJJ appeal and an independent reviewer is needed, DJJ and DDSN State Directors will determine how payment will be made for the reviewer on a case by case basis.

C. LOSS OF INCLUSION STATUS

Once the DDSN Liaison Psychologist diagnoses a juvenile with SMR, this status will be removed only if the juvenile's commitment ends or if the juvenile's diagnosis is changed to a diagnosis other than SMR.

D. INTERAGENCY STAFFING

Within 30 days of SMR designation, DJJ will initiate a treatment team staffing with DDSN to identify treatment/placement needs of such juveniles. This team will consist of those individuals identified under Section H of this document. Upon conclusion of this treatment team meeting, DDSN will assume primary case management responsibility.

E. JUVENILE TRANSFERS

The authority for and the process by which juveniles diagnosed with SMR are transferred to DDSN is found in Section 20-7-7815 of the S. C. Code of Laws. DJJ, through the voluntary admission process or by instituting necessary legal action in the Family Court, as delineated in Section 20-7-7815 and Section 44-20-450, and through use of a Transfer Document (Attachment B) shall accomplish the transfer of the juvenile to DDSN. As set forth in this document, although transferred to the jurisdiction of DDSN, all qualifying juveniles remain in a DJJ commitment status and can be released from such status only

by the Board of Juvenile Parole or the expiration of a determinate sentence. DDSN has authority for determining appropriate treatment and placement, appropriate levels of restriction and security, and may move these juveniles between any placement or programs operated by DDSN or with which DDSN contracts. Juveniles cannot be released to their home or placed in non-residential programs in their home community by DDSN without consent and approval of the S.C. Juvenile Parole Board. In the event that DDSN is unable to secure a transfer date for a juvenile diagnosed with SMR, whose age warrants movement to South Carolina Department of Corrections, DJJ has the authority to hold juveniles for up to six months beyond their transfer date. As a result, DJJ will retain, for up to 90 days, a juvenile already diagnosed with SMR until he or she transfers to an appropriate treatment program.

For those juveniles diagnosed with SMR who are required to register in South Carolina's Sex Offenders Registry, registration shall continue to be the responsibility of DJJ. Upon the transfer of such juveniles to the jurisdiction of DDSN, all subsequent registration requirements or notifications of registration updates caused by a change in placement, etc., shall be the responsibility of DDSN.

F. PROGRAMMING

DDSN recognizes the necessity for a dual approach to treatment plans for juveniles diagnosed with SMR which meets both the individual needs of the juveniles and the need for public safety. These juveniles placed under the jurisdiction of DDSN may receive off-site visitation with family and for individual or group activities consistent with appropriate treatment and therapeutic practices as determined by DDSN.

G. PLACEMENT/MOVEMENT OF QUALIFYING JUVENILES

Juveniles diagnosed with SMR transferred by DJJ to DDSN pursuant to Section 20-7-7815 may be placed by DDSN in any appropriate placement. Such placement may include, if clinically indicated, therapeutic foster care, so long as the therapeutic foster home in which the juvenile is placed is not located in the juvenile's and/or victim's home community, or county, if ordered by the Court. Such therapeutic foster care placements close to the juvenile's or victim's home may be considered appropriate on a case by case basis as such placements may be clinically indicated for family treatment and reunification.

When a juvenile diagnosed with SMR is moved to a different placement or program from which he/she was originally assigned following placement by DDSN, DDSN will notify DJJ's CSNCM and a S.C. Juvenile Parole Board representative of the placement within one working day after it occurs. Initial notification may be verbal followed within 48 hours with written notification.

In the event a juvenile escapes from a DDSN residential facility or a DDSN contractual provider's facility, DDSN will immediately notify DJJ's Public Safety Office (803-896-9100) and the DJJ CSNCM (803-896-9593). In the event a juvenile is removed from

such a facility for crisis, DDSN will immediately notify DJJ's CSNCM. In both cases, DDSN will also notify a S.C. Juvenile Parole representative.

Should a juvenile diagnosed with SMR incur criminal charges while in a DDSN facility or privately contracted facility, and such juvenile is consequently placed in Detention awaiting his or her hearing on those charges, DDSN will prepare an alternate placement plan so the juvenile may be placed upon disposition of the charges or release from detention, given that the juvenile commitment continues. DDSN will be able to secure another alternative placement for any such juvenile diagnosed with SMR once the criminal charges have been resolved.

H. INTERAGENCY TREATMENT TEAM MEMBERSHIP

A subclass juvenile's treatment team shall consist of, at a minimum, the DDSN Liaison Psychologist, the DDSN state and DSN community representative, a DJJ psychologist, DJJ social worker, a representative from DJJ's education division, and DJJ's CSNCM. An advocate from Protection and Advocacy, the juvenile's S.C. Juvenile Parole Board Examiner, the juvenile's DJJ Community Specialist and representative from the juvenile's home school district will also be invited to attend. The absence of one or more invited individual treatment team members shall not require the rescheduling of team meetings.

I. RETURN TO DJJ – REMOVAL FROM THE SUBCLASS

The transfer of a juvenile diagnosed with SMR to the jurisdiction of DDSN is intended to be a movement of that juvenile from confinement within the juvenile correctional system. Only in cases where a juvenile's diagnosis is changed to a diagnosis which does not qualify him/her will a juvenile, once transferred to DDSN, be returned to correctional confinement at DJJ. In such cases, options short of re-confinement in a secure correctional institution will be considered and must be determined inappropriate before re-incarceration is sought.

A juvenile already designated as having SMR and transferred to DDSN will not be returned to DJJ prior to a treatment team staffing to include clinical staff from both agencies. If DDSN believes a juvenile does not meet the qualifications for SMR, DDSN will notify the DJJ CSNCM. Prior to a change in diagnosis occurring which could result in a return to DJJ, the designated DDSN Liaison Psychologist shall be consulted and a staffing with the juvenile's treatment team shall occur. If as a result of this staffing it is agreed that the juvenile does not meet the qualifications for SMR, a DDSN/DJJ Removal Form (Attachment C) will be completed by those present; this form will clearly outline the reasons the juvenile does not qualify and will specify appropriate placement and treatment for the juvenile. Should DJJ and DDSN fail to agree, the appeal process outlined in Section B (Identification of Subclass Members) shall be followed.

If a conditional release has been granted by the S.C. Juvenile Parole Board and revocation is subsequently initiated, a juvenile may be returned to DJJ's institutional

facilities or placed in some other secure correctional facility or program only after a preliminary hearing conducted by the S.C. Juvenile Parole Board's hearings officer has been held and a decision has been made by the hearings officer or S.C. Juvenile Parole Board to do so has occurred.

If a juvenile who has been diagnosed with SMR returns to DJJ either because parole is revoked or because the juvenile has committed a new offense, the juvenile will retain his or her SMR designation if he or she has been diagnosed with Moderate Mental Retardation or below (i.e., an IQ of approximately 55 or below with concurrent deficits in adaptive functioning), and DDSN will secure placement within 90 days of being notified of the revocation or recommitment. Should such a juvenile have a diagnosis of Mild Mental Retardation (i.e., an IQ of approximately 55 to approximately 70 with concurrent deficits in adaptive functioning), he or she will be further assessed with regard to institutional adjustment. Such juveniles will be diagnosed with SMR if they demonstrate poor institutional adjustment as described in Section A, "Criteria for Inclusion." Such a determination will be made by the DDSN Liaison Psychologist within 30 days of notification of the juvenile's return to a DJJ institution. DDSN reserves the right to re-assess any juvenile if any new information becomes available that may impact the juvenile's continued status as a subclass member.

J. RECORDS/COMMUNICATION

DJJ and DDSN clinical staff and treatment team members shall have access to and may copy, upon request, all community, institutional, medical, test data, etc. on juveniles who may be or are diagnosed with SMR. Additional information on such juveniles not reduced to writing, but known to DJJ or DDSN staff, shall also be provided by staff of either agency to staff of the other agency.

K. COORDINATION AND RECORD OF MOVEMENT

A master list of all juveniles diagnosed with SMR, which contains the juvenile's name, his/her committing offense, his/her diagnosis and date of this diagnosis, the juvenile's commitment status (i.e., commitment, confined within DJJ; transferred to DDSN; conditionally released by the S.C. Juvenile Parole Board; expiration of determinate sentence), the placement/program the juvenile is located in and the dates of placement will be kept by DJJ's Office of Clinical and Professional Services. A master list of all DJJ institutional referrals to DDSN which contains the juvenile's name, date of birth, committing offense, date of referral to DDSN, date of inclusion, eligibility status, and placement/program services will be kept by DDSN's Office of Behavioral Supports. Therefore, in order to keep these master lists current, within one working day after a juvenile diagnosed with SMR is moved by DDSN within its network of private providers or released by the S.C. Juvenile Parole Board, notice of such movement will be provided to DJJ's CSNCM and DDSN's Office of Behavioral Supports and included on these master lists.

L. TRANSPORTATION

When a juvenile diagnosed with SMR is transferred from a DJJ institution into a placement secured by DDSN, DJJ will transport the juvenile from the DJJ institution to the designated placement facility. The placement facility, the local DSN board, and DDSN will then be responsible for coordinating transportation for the juvenile after he/she is placed outside the DJJ institution. If a juvenile diagnosed with SMR in a DJJ institution has been conditionally or unconditionally released by the SC Juvenile Parole Board, or has completed a determinate sentence at DJJ, DDSN will be responsible for coordination of transportation for the juvenile from the DJJ institution.

M. VICTIM NOTIFICATION

When a juvenile diagnosed with SMR is placed under the jurisdiction of DDSN pursuant to 20-7-7815, DJJ's Office of Victim Services will provide notification to the victim, if requested. In addition, DJJ's Victims Services Office will notify DDSN of victim notification requirements, if any, at the time of the initial placement staffing (described in Section D). DJJ will handle all required victim notification in the case of an escape from a DDSN placement. DDSN agrees to notify the DJJ Office of Victim Services at (803) 896-9544, [fax: (803) 896-6917; pager: 1-800-614-4407] of escapes. All subsequent victim notifications (except for escapes) brought about by the movement of a juvenile within DDSN or private provider's placements or brought about due to furloughs or the granting of passes to the juvenile, will be handled by the S.C. Juvenile Parole Board. DDSN will notify the S.C. Juvenile Parole Board's Victim Assistance Program and the DJJ Community Specialist whenever a juvenile diagnosed with SMR is placed in a facility or program that may grant the juvenile a pass or furlough unaccompanied by a staff member. DDSN will ensure that the facilities within its jurisdiction provide timely advance notification (at least two weeks) to the Juvenile Parole Board Victim Assistance Program of a juvenile's unsupervised pass/furlough, and also direct its private provider placements to provide such advance notification. The Juvenile Parole Board's Victim Assistance Program will, in turn, provide advance notification of any passes/furloughs to the victim. Similarly, DDSN agrees to notify the DJJ Office of Victims Services of escapes, off-site visitation and passes, or movement of a juvenile diagnosed with SMR so that victim notification can occur.

N. SUPERVISION UPON RELEASE – PLANNING PROCESS STAFFINGS

DDSN and DJJ acknowledge that the authority to release a juvenile diagnosed with SMR, as with any other juvenile indeterminately committed by the Family Court for commission of a crime, rests exclusively with the S.C. Juvenile Parole Board. DDSN and DJJ further acknowledge that to effectively manage release opportunities, both Agencies must be involved in the release planning process and in the supervision of, and provision of treatment services to, the juvenile upon release. DJJ agrees that for all juveniles conditionally released by the S.C. Juvenile Parole Board, it will provide supervision at the level specified by the S.C. Juvenile Parole Board. DDSN agrees that ordered and needed services will be provided to juveniles diagnosed with SMR through its local DSN

Provider Networks on a priority basis, and that provision of these services will be coordinated and monitored through the DDSN State office.

DJJ further agrees that the juvenile's assigned community specialist will continue to submit to the S.C. Juvenile Parole Board community board reports which emphasize primarily the suitability and readiness of the juvenile's family, home and community to accept the juvenile upon release. Prior to recommending release, a final staffing will be held and recommendations of the juvenile's anticipated future treatment needs and the best way to address these needs will be presented to the S.C. Juvenile Parole Board. DJJ agrees that it will defer to the clinical expertise of DDSN staff regarding a juvenile's readiness for release whenever the two Agencies disagree. The juvenile's parole examiner shall be invited to all staffings. DDSN will be notified and shall have access to any board hearings or reviews by the S.C. Juvenile Parole Board.

For juveniles age eighteen and over, the joint staffings will include a review of the individual's needs and services available. DDSN agrees that while it is primarily responsible for coordinating discharge planning, making applications to step-down placements/programs, and arranging for transportation to and from all placements, DDSN will coordinate these activities with all appropriate agencies including DJJ. DJJ commits to assisting in this process as requested by DDSN and through DJJ's attendance and participation at called staffings and meetings involving juveniles diagnosed with SMR.

O. IDENTIFICATION OF OTHER POPULATIONS

DDSN and DJJ recognize that some delinquent juveniles needing DDSN services may not qualify for SMR diagnosis. DJJ will continue to refer to DDSN those individuals who appear to meet the criteria for DDSN Community Services. DJJ and DDSN will work cooperatively to obtain parental permission for DDSN to complete the intake process. After receiving completed referrals from DJJ as outlined in Section B, DDSN will determine eligibility within 90 days and notify DJJ of its decision. In making its determination, DDSN may use acceptable data derived from other sources, including DJJ, in determining intellectual status and adaptive functioning and certification of an individual to have mental retardation. If additional information is necessary to make such a determination, DDSN will contact DJJ to seek such information. If eligibility criteria are not met for DDSN Community services, DJJ will follow its own internal guidelines to assure that the juvenile's needs are met and appropriate services provided.

P. COST SHARE AGREEMENT

DDSN and DJJ will continue to pursue cost share agreements for juveniles who are identified as having mental retardation and adjudicated as delinquent who are on probation and/or conditionally released from DJJ. These cost share agreements will be in accordance with the cost share formula originated by the Children's Case Resolution System but which may vary in terms of the percentage of funding amounts shared as agreed upon by the agencies.

Q. CONTINUED INTERAGENCY COLLABORATION

DDSN and DJJ Agency Directors or their designees agree to meet at least twice yearly, and more frequently if necessary, to address the immediate and long-term interagency service needs of juvenile delinquents with mental retardation as well as continued development and improvement of this Agreement.

DJJ and DDSN will provide joint trainings to their respective staff on the content of this agreement. Training content will be approved by both agencies to assure consistency in information delivery.

R. AMENDMENTS AND TERMS OF AGREEMENT

The terms of this Agreement shall remain in effect from the date of signing by both parties unless amended in writing by mutual agreement of the Directors of DJJ and DDSN. Either party may terminate the Agreement with 90 days written notice provided to the other Agency, addressed to the Director of that agency, which notifies the other Agency of its intent to terminate this Agreement.

SC DEPARTMENT OF JUVENILE JUSTICE

Witness Sarah Jane Odom William R. Byars, Director
[Signature] 8-1-06
 Witness Date

SC DEPARTMENT OF DISABILITIES
AND SPECIAL NEEDS

Kat Izzy
Witness

Butkus
Dr. Stanley J. Butkus, Director

8/11/06
Date

Attachments

APPROVED AS TO FORM
SC Department of Juvenile Justice
Office of General Counsel